

ELECTRONIC BENEFIT TRANSFER (EBT) APPEALS VIRGINIA DEPARTMENT OF SOCIAL SERVICES

- ✚ *Fair Hearing. One in which authority is fairly exercised; that is, consistently with the fundamental principles of justice embraced within the conception of due process of law.*
- ✚ *Contemplated in a fair hearing is the right to present evidence, to cross examine, and to have findings supported by evidence. Black's Law Dictionary 597 (6TH ED. 1990).*

Preparation is crucial to the presentation of your case at the hearing. The hearing officer is impartial and comes to the hearing knowing only what the EBT Office has presented in its summary of facts. The quality of the presentation by both the EBT Office and the customer at the hearing is very important to the case. It is important that the participants present all of the information that the hearing officer needs to render a decision. Besides weighing the testimony of the participants and the evidence, the hearing officer will be evaluating the credibility of the witnesses. Do the witnesses appear to be informed? Can they document what they say happened? Is their explanation logical? Do they cite policy to support their position?

The Benefits and Services Section hearing officers have compiled the following list of suggestions to help you prepare to present your case:

I. EBT Office A. Review the File

- Review the Detail Journal Inquiry screen to make sure no errors were made regarding the transaction(s).

- Review the documentation to make sure that policy was correctly implemented.
- Check all applicable calculations.
- If the customer was mistakenly told that an adverse adjustment would be made to the household account, the EBT Office should contact the customer, explain the mistake, ensure that the household account is credited, and explain that the customer may either withdraw the appeal request or proceed with the appeal.
- If the appeal is withdrawn, the withdrawal may be made orally or in writing to the hearing officer.

B. Prepare the Summary of Facts

- The summary of facts should include all **relevant** information such as the exact amount of the transaction, the retailer action and the client action used in making the determination.
- The summary of facts should include a logical, chronological sequence of the events that lead up to the action taken and assumes that the reader is not familiar with the facts of the case or the program policy.
- Copies of all **relevant** documents – notices, letters, verifications, computer printouts, and any other material that will be discussed at the hearing - must be attached and submitted with the summary of facts.
- The statement of facts should include a copy of the applicable policy or law and the correct citation for applicable policy or law. The hearing officers prefer that a copy of the policy or law be attached to the statement of facts.
- The customer should be referred to throughout the summary of facts by their correct title – Mr. or Ms. – and their last name.

- The summary of facts must be signed and sent to (1) the customer, (2) the customer's representative, if any, and (3) the hearing officer.
- The summary of facts and all documentation must be mailed in sufficient time so that the hearing officer and the customer receive it at least five days prior to the hearing.

C. Preparation for the Hearing

- The EBT Office must contact the customer and offer to hold an informal conference prior to the hearing. The customer may accept or decline the offer.
- The EBT Office representative should review the relevant documentation to refresh their recollection of the case.
- The EBT Office representative should focus the preparation and presentation of the case on the issue that the customer has appealed.
- The EBT Office representative should plan an opening statement, questions for witnesses, and a closing statement.
- The EBT Office representative should notify their representative and the retailer involved in the action being disputed that they must participate in the hearing.

D. Hearing Protocol

There is no prohibition against parties other than the EBT Office and the Food Stamp Program Household having input into the fair hearing process.

- All EBT appeals will be conducted by conference call.
- The EBT Office should be ready to begin the hearing at the scheduled time with all of its witnesses present. The hearing officer will call the customer first and then the EBT Office to either conduct the hearing or explain that the customer did not answer.

- The EBT Office representative should direct his/her comments to the hearing officer.
- The EBT Office representative should not argue with the customer or the customer's representative.
- During the presentation of the customer's case, the EBT Office representative should make notes of rebuttal statements to make when it is the agency's turn to speak.
- While listening to the customer's witness testify, the EBT Office representative should make notes of questions to ask when it is the EBT Office's turn to question the witness.
- When presenting the EBT Office's case the EBT Office representative must not add any new information not contained in the EBT Office's summary of facts, unless the EBT Office is responding to an issue raised by the customer at the hearing.
- During the hearing the EBT Office representative should remember to address everyone present by their appropriate title and their last name.

E. After the Hearing

- If the hearing officer requests copies of documents during the hearing, the EBT Office representative should provide copies only of the documents that are requested, and send a copy to the hearing officer, customer, and the customer's representative, if any.
- If the hearing officer's decision directs the EBT Office to take corrective action, the EBT Office representative must confirm that the appropriate action is taken within ten working days of the date of the decision.
- After the corrective action is taken, the EBT Office representative must notify the customer and the hearing officer in writing that the EBT Office has complied with the decision.

II. The Household/Customer

A. Preparation for the Hearing

- If the customer is unable to participate in the scheduled hearing, the customer must notify either the hearing officer or the EBT Office as soon as possible prior to the hearing.
- The customer should notify the EBT Office and the hearing officer if the customer has not received the summary of facts and supporting documentation from the EBT Office at least five days prior to the hearing.
- The customer may request that the EBT Office hold an informal conference before the hearing. The informal conference is an opportunity for the customer to (1) present information that the EBT Office may not have known when the action was taken, and (2) to learn the EBT Office's reasoning for its action. The informal conference does not take the place of the hearing.
- If the retailer withdraws, rescinds, or modifies its action as a result of the informal conference and the EBT contractor credits the customer's EBT card, the customer should notify the EBT Office whether the appeal will be withdrawn.
- If the appeal is withdrawn, the withdrawal may be made orally or in writing to the hearing officer.
- The customer should identify all witnesses and notify them of the time and date of the hearing.
- The customer may select a representative to present the customer's case. If the customer decides to have a representative present the customer's case, the customer should notify the representative of the time and date of the hearing.
- The customer, or customer's representative, should review all the documentation

applicable to the customer's case in preparation for the hearing.

- The customer, or customer's representative, should plan an opening statement, questions for the witnesses, and a closing statement.
- The customer, or customer's representative, should collect all documentary evidence necessary as part of the customer's case to present to the hearing officer before or at the hearing. Any documents submitted to the hearing officer will be copied for the hearing officer and the EBT Office and the original documents will be returned.

B. Hearing Protocol

- The customer should be ready to begin the hearing at the scheduled time.
- During the hearing, the customer, or customer's representative, should direct their comments to the hearing officer.
- The customer, or customer's representative, should not engage in argument with the EBT Office representative.
- While listening to the EBT Office's case, the customer, or customer's representative, should make notes of rebuttal statements to make when it is the customer's turn to speak.
- While listening to the EBT Office's witness testify, the customer, or customer's representative, should make notes of questions to ask when it is the customer's turn to question the witness.
- The customer, or customer's representative, should remember to address everyone present by their appropriate title and their last name.